

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 1608

Short Title: Revise Payday Lending Regulations. (Public)

Sponsors: Representatives Miller; and Luebke.

Referred to: Rules, Calendar, and Operations of the House.

June 11, 2002

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE CHECK-CASHING LAW WITH REGARD TO
3 POSTDATED OR DELAYED DEPOSIT CHECKS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 53-275 reads as rewritten:

6 "§ 53-275. Definitions.

7 As used in this Article, unless the context clearly requires otherwise, the term:

8 (1) "Cashing" means providing currency for payment instruments, but
9 does not include the bona fide sale or exchange of travelers checks and
10 foreign denomination payment instruments.

11 (1a) "Cash advance" means the amount of cash or its equivalent, whether
12 paid by direct payment or by electronic credit or deposit, provided to a
13 customer in a deferred deposit transaction.

14 (2) "Check-cashing service" means any person or entity engaged in the
15 business of cashing checks, drafts, or money orders for a fee, service
16 charge, or other consideration. "Check-cashing service" also means
17 any person or entity engaged in the business of making, originating,
18 processing, accepting, arranging, or transmitting applications for
19 deferred deposit transactions whether the transactions are done directly
20 or in conjunction with, or as agent for, another person or entity.

21 (3) "Commission" means the State Banking Commission.

22 (4) "Commissioner" means the Commissioner of Banks.

23 (4a) "Deferred deposit transaction" means a check-cashing or similar loan
24 transaction in which a person pays a cash advance to a customer in
25 return for a payment device and agrees, for consideration, to hold the
26 payment device for a period of days prior to deposit, presentment, or
27 withdrawal.

28 (5) "Licensee" means a person or entity licensed to engage in a
29 check-cashing business under this Article.

1 (5a) "Payment device" means an electronic or written check, draft, money
2 order, authorization for an electronic debit or withdrawal, or other
3 electronic or written instrument or order for the transmission or
4 payment of money or monetary value, whether or not the instrument is
5 negotiable.

6 (6) "Person" means an individual, partnership, association, or
7 corporation."

8 **SECTION 2.** G.S. 53-276 reads as rewritten:

9 **"§ 53-276. License required.**

10 No person or other entity may engage in the business of cashing checks, drafts, or
11 money orders for consideration without first obtaining a license under this Article. No
12 person or other entity providing a check-cashing service may avoid the requirements of
13 this Article by providing a ~~check-check~~, electronic credit or deposit, or other currency
14 equivalent instead of currency when cashing payment ~~instruments.~~ devices."

15 **SECTION 3.** G.S. 53-277(a)(1) reads as rewritten:

16 "(1) A bank, savings institution, credit union, or farm credit system
17 organized under the laws of the United States or any ~~state;~~ state, even
18 if maintaining a place of business in this State; and".

19 **SECTION 4.** G.S. 53-278 reads as rewritten:

20 **"§ 53-278. Application for license; investigation; application fee.**

21 (a) An application for licensure under this Article shall be in writing, under oath,
22 and on a form prescribed by the Commissioner. The application shall set forth all of the
23 following:

- 24 (1) The name and address of the applicant.
- 25 (2) If the applicant is a firm or partnership, the name and address of each
26 member of the firm or partnership.
- 27 (3) If the applicant is a corporation, the name and address of each officer,
28 director, registered agent, and principal.
- 29 (4) The addresses of the locations of the business to be licensed.
- 30 (5) Other information concerning the financial responsibility, background
31 experience, and activities of the applicant and its members, officers,
32 directors, and principals as the Commissioner requires.

33 (b) The Commissioner may make such investigations as the Commissioner
34 deems necessary to determine if the applicant has complied with all applicable
35 provisions of this Article and State and federal law.

36 (c) The application shall be accompanied by payment of a two hundred fifty
37 dollar (\$250.00) application fee and a five hundred dollar (\$500.00) investigation fee. If
38 the applicant intends to offer deferred deposit check-cashing services under G.S. 53-
39 281.1, the application fee shall be five hundred dollars (\$500.00) and the investigation
40 fee shall be one thousand dollars (\$1,000). These fees are not refundable or abatable,
41 but, if the license is granted, payment of the application fee shall satisfy the fee
42 requirement for the first license year or remaining part thereof.

43 (d) Licenses shall expire annually and may be renewed upon payment of a
44 license fee of two hundred fifty dollars (\$250.00) plus a fifty dollar (\$50.00) fee for

1 each branch location certificate issued under a license. For any licensee who offers
2 deferred deposit check-cashing under G.S. 53-281.1, the renewal fee shall be one
3 thousand five hundred dollars (\$1,500) plus a two hundred fifty dollar (\$250.00) fee for
4 every branch location certificate."

5 **SECTION 5.** G.S. 53-282 is amended by adding a new subsection to read:

6 "(d) The Commissioner may require licensees to submit any data or information,
7 including information concerning deferred deposit transactions, which is reasonably
8 available to the licensee and which the Commissioner deems necessary to the
9 performance of the Commissioner's oversight duties."

10 **SECTION 6.** G.S. 53-283 reads as rewritten:

11 **"§ 53-283. Prohibited practices.**

12 No person required to be licensed under this Article shall do any of the following:

- 13 (1) Charge fees in excess of those authorized under this Article. Article, or
14 originate, process, accept, or transmit applications for deferred deposit
15 transactions for which the fees exceed those permitted in this Article.
16 (2) Engage in the business of making loans of money, or extensions of
17 credit, or discounting notes, bills of exchange, items, or other
18 evidences of debt; or accepting deposits or bailments of money or
19 items, except as expressly provided by ~~G.S. 53-281~~G.S. 53-281.1.
20 (3) Use or cause to be published or disseminated any advertising
21 communication which contains any false, misleading, or deceptive
22 statement or representation.
23 (4) Conduct business at premises or locations other than locations licensed
24 by the Commissioner.
25 (5) Engage in unfair, deceptive, or fraudulent practices.
26 (6) Cash a check, draft, or money order made payable to a payee other
27 than a natural person unless the licensee has previously obtained
28 appropriate documentation from the executive entity of the payee
29 clearly indicating the authority of the natural person or persons cashing
30 the check, draft, or money order on behalf of the payee.
31 (7) Use or threaten to use the criminal process to collect on a payment
32 device in a deferred deposit transaction that is returned or may be
33 returned for insufficient funds.
34 (8) Make more than one deferred deposit transaction to a customer at the
35 same time or accept or hold more than one deferred deposit payment
36 device from a customer at the same time."

37 **SECTION 7.** G.S. 53-284(a) is amended by adding two new subdivisions to

38 read:

- 39 "(7) Failed to comply with the Commissioner's request for assistance in
40 resolving a complaint.
41 (8) Failed to cooperate with any investigation conducted by the
42 Commissioner."

43 **SECTION 8.** G.S. 53-286 reads as rewritten:

44 **"§ 53-286. Civil penalties and restitution.**

1 (a) The Commissioner may order and impose civil penalties upon any person
2 required to be licensed under this Article for violations of this Article or rules adopted
3 thereunder. Civil penalties shall not exceed one thousand dollars (\$1,000) per violation.
4 All civil money penalties collected under this Article shall be paid to the county school
5 fund. The Commissioner may also order repayment of unlawful or excessive fees
6 charged to customers.

7 (b) Any deferred deposit check-cashing or transaction agreement, the making or
8 collecting of which violates any provision of this Article, or rule adopted thereunder,
9 except as a result of accidental or bona fide error of computation, shall be void, and the
10 licensee or any other party acting by or through a licensee shall have no right to collect,
11 receive, or retain any principal or charges whatsoever with respect to the transaction."

12 **SECTION 9.** Article 22 of Chapter 53 of the General Statutes is amended by
13 adding a new section to read:

14 "**§ 53-281.1. Deferred deposit loans.**

15 (a) A licensee may make a deferred deposit loan by deferring the deposit of a
16 personal check or payment device cashed for a customer for a period of time no less
17 than 30 days pursuant to the provisions of this section. Licensees shall not make more
18 than one deferred deposit loan per customer within a 60-day period of time.

19 (b) The amount of credit extended pursuant to this section shall not exceed three
20 hundred dollars (\$300.00).

21 (c) Each deferred deposit loan transaction shall be documented by a written
22 agreement that has been signed by the customer and the licensee. The written agreement
23 shall contain a statement of the total amount of any fees charged, expressed both as a
24 dollar amount and as an effective annual percentage rate (APR). The written agreement
25 shall authorize the licensee to defer deposit of the personal check until a specific date
26 consistent with this section.

27 (d) Licensees may contract for, compute, and receive charges at rates not
28 exceeding thirty-six percent (36%) per annum for making a deferred deposit loan
29 pursuant to this section. Licensees shall not charge any fees for cashing a postdated or
30 delayed deposit payment device in addition to the charges authorized in this subsection.

31 (e) No payment device cashed under the provisions of this section shall be repaid
32 by the proceeds of another payment device cashed by the same licensee or any affiliate
33 of the licensee. A licensee shall not, for any consideration, renew or otherwise extend
34 any deferred deposit loan or withhold a payment device from deposit for any period
35 beyond the time set forth in the written agreement with the customer.

36 (f) When a deferred deposit loan is paid in full by the borrower, the licensee
37 shall report that the loan has been paid in full to a credit reporting bureau, as that term is
38 defined in the federal Fair Credit Reporting Act."

39 **SECTION 10.** G.S. 53-280(b) reads as rewritten:

40 "(b) A licensee may not advance monies on the security of any check unless the
41 account from which the check being presented is drawn is legitimate, open, and active.
42 Except as provided by ~~G.S. 53-281(a)~~, G.S. 53-281.1, any licensee who cashes a check
43 for a fee shall deposit the check not later than three business days from the date the
44 check is cashed."

1 **SECTION 11.** This act becomes effective October 1, 2002, and applies to
2 transactions made on or after that date.